

**FINAL**

**MINUTES OF THE COTTONWOOD HEIGHTS CITY  
PLANNING COMMISSION MEETING**

**Wednesday, March 21, 2012**

**6:00 p.m.**

**Cottonwood Heights City Council Room  
1265 East Fort Union Boulevard, Suite 300  
Cottonwood Heights, Utah**

***ATTENDANCE***

**Planning Commission Members:**

Perry Bolyard, Chair  
Paxton Guymon  
Lindsay Holt  
Dennis Peters  
Joseph L. Scott  
Jennifer Shah

**City Staff:**

Brian Berndt, Planning Director  
Morgan Brim, City Planner  
Shane Topham, City Attorney  
Brad Gilson, City Engineer

**BUSINESS MEETING**

**1.0 WELCOME/ACKNOWLEDGEMENTS – CHAIR BOLYARD**

Chair Perry Bolyard called the meeting to order at 6:00 p.m.

Chair Bolyard recognized City Planner, Morgan Brim, who would soon be leaving his employ with the City. Appreciation was expressed to Mr. Brim for his efforts over the last several years. Mr. Brim stated that it had been a pleasure to work with the Commission and stated that they had set a very high professional standard. He had learned a great deal. The Commission wished Mr. Brim the very best in his future endeavors.

**2.0 CITIZEN COMMENTS**

There were no citizen comments.

**3.0 PUBLIC HEARINGS**

**3.1 (Project #CUP 11-004) Public Comment on a Proposal from Jeffrey Gochnour Requesting Approval to Construct Two Office Buildings Located at 2750, 2770, and 2800 East Cottonwood Parkway.**

Chair Bolyard recommended the Commission discuss allowing public comment for a specific period of time. It seemed likely to Commissioner Guymon that another work session would be held on April 11 and the desire was to have all public comments submitted at least one week prior to that.

***(18:07:05) Commissioner Guymon moved to extend the public comment period through and including April 4, 2012. Commissioner Shah seconded the motion. Vote on motion: Joseph L. Scott-Aye, Jennifer Shah-Aye, Paxton Guymon-Aye, Lindsay Holt-Aye, Dennis Peters-Aye, Chair Perry Bolyard-Aye. The motion passed unanimously.***

Chair Bolyard commented that public comments could be submitted to Planning Director, Brian Berndt, via letter or email.

Mr. Berndt presented the staff report and stated that the proposal was for a conditional use permit that includes the approval of the site/development plan and the building elevations. The site was in the northeastern section of the City adjacent to I-215 in the southwestern corner of the Cottonwood Corporate Center. The site was surrounded by buildings on the north and east and residential properties on the south and the west. The adjacent property is on the Blue Cross Blue Shield two-building complex. The Cottonwood Corporate Center is within the ORD Zone and the residential properties to the south and west are zoned 1-A. The General Plan designation for the property was ORD (Office Research and Development).

Mr. Berndt reported that the original Cottonwood Corporate Center property was used as a sand and gravel operation with the County. The site was rezoned ORD in 1992 by Salt Lake County and the Cottonwood Corporate Center conditional use permit was approved in January 1995. No mention of building height or size was mentioned in the original approval. The only reference to height and size were in subsequent files for the individual properties.

Mr. Berndt presented an overview of the site plan and stated that the site is being designed so that the two buildings are in the northeastern corner of the site. The building to the east and perpendicular to the Cottonwood Parkway is a four-story building that is roughly 100,000 square feet in size and 58 feet tall. The building parallel to Cottonwood Parkway is a six-story building that is 85-feet high and six stories tall. Mr. Berndt stated that the parking area is in the southwest portion of the site. Entry points are from the center of the site off of Cottonwood Parkway in the middle and the eastern boundary is shared with Blue Cross Blue Shield. The entry to the lower level parking was off of the western driveway at the end of Cottonwood Parkway.

(18:14:09) Jeff Gochnour was present representing Cottonwood Partners. He reported that what is proposed is a 250,000 square-foot office project with 843 parking stalls proposed. A change was made to the landscaping, which was increased by 5% from 30% to 35%. Since the last meeting, the applicants focused on finding ways to mitigate the neighbors' concerns. The overall height of the six-story building was reduced by three feet. There was a two-story reduction in floor height of the four-story building as well. The mechanical equipment was planned beneath the building, which allows the developer to reduce the height of the building by almost one floor. The buildings to the north and the Blue Cross Blue Shield buildings have a penthouse that screens the mechanical equipment which is 15 to 18 feet above the roofline.

Mr. Gochnour reported that the floor plate was reconfigured slightly in order to move the building from south to north by about 10 feet further from the neighboring property line. The most significant change was to the parking structure where the plan was modified to allow for parking beneath the building. In response to another concern raised about traffic coming into one entrance, Mr. Gochnour stated that a change was made to minimize traffic and an additional

parking entrance was added off of Cottonwood Parkway. Access was then created to the lower level from the west side of the parking structure off of Cottonwood Parkway.

The applicants addressed concerns about trash pickup by consolidating two trash areas into one. Rather than traditional dumpsters, compactors were proposed for recycling and waste. Because the trash will be compacted, trash pickups would need to occur once or twice per month. Efforts were also made to make the trail system more accessible. The intent was to create a trail to the sidewalk.

Mr. Gochmour indicated that the proposal was to put green screens on the structure to allow for the growing of vines or ivy to provide screening. The columns were also exposed to help break up the long expanse of concrete. The same renderings were shown with the proposed landscaping once it is mature.

With respect to business hours, Mr. Gochmour stated that in a typical office complex the hours are approximately 8:00 a.m. to 6:00 p.m. A lighting plan had not yet been submitted by the applicant, however, Mr. Gochmour stated that shielded lighting was proposed and all of the requirements would be met. With regard to noise, Commissioner Shah stated that there had been complaints about malfunctioning equipment at other sites that created significant noise. Her preference would have been to have a noise analysis for projects next to sensitive areas. With regard to construction noise, Mr. Gochmour stated that there specific construction hours must be adhered to.

The geotechnical report was referred to which shows that the area was once a gravel pit which resulted in challenging soils that would need to be dealt with. It was estimated that five to eight feet of fill would be needed.

(18:36:25) One of the substantive concerns of residents was the proximity of the four-story building to the residents on the south and the two-story parking on the west. A Commissioner asked if it would be feasible to move the six-story building to the west and move the four-story building to the north. Mr. Gochmour stated that the concern had to do with the impact to the neighbors to the west. What was proposed was the least impactful from their perspective.

Chair Bolyard opened the public hearing.

***The following is a verbatim transcript of this portion of the meeting.***

(18:40:30) Wade Budge: Thank you very much Planning Commissioners, Chair. I appreciate the opportunity to address you about this project. As we just discussed, I represent a number of homeowners. Principally homeowners who are the owners of homes on Palma Way, Coquina Court, and Benecia Drive.

First of all, I want to start by indicating that we are pleased with the cooperation we have received from staff and we just got involved in this project, reviewing it. At least I did within the last few weeks and I was able to get a lot of information from the planning staff so I want to acknowledge their cooperation. I also want to acknowledge the efforts of the developer who has undertaken to reach out to the neighbors and make revisions to the project. As we'll discuss, we believe there are further modifications needed to address the impacts that are associated with this project. I also want to recognize the current owner of the property who is maintaining the trail very well and it is

a nice amenity for the community. Finally, I want to indicate that I'm not here representing a group that wants there to be absolutely no development ever at that site. We recognize that the County had zoned this as office space in the 1990s and that when this City incorporated and took in that area, it created a zoning district and continued the ORD zoning district in that area. So, what we are trying to do is first make sure that it is developed in a way that meets the expectations that have developed over the many, many years that these homeowners have lived in this area. And as they have watched this project come to many planning commissions; initially at the County and now to this body.

There are two main contentions that I'm going to be discussing today. The first one is why the conditional use permit should not be issued for this particular proposal. And that will be because of the impacts that we believe cannot be sufficiently mitigated. And these would be harmful impacts to these neighbors. And then second of all there's a requirement under the Cottonwood Heights Code that all development in the ORD Zone comply with the Master Plan. And in this case we have learned from staff and in the report that the Master Plan at issue is a Master Plan that was created by the County back when the County was providing approvals in the mid 1990s. And we have gone through an extensive effort to locate all of the records that show what was the Master Plan and then also to find other documents that support our contention that that Master Plan always contemplated a much smaller density, or square footage if you will, of office use on this site. And if that is taken into account, then that will affect a lot of these parking issues we've addressed.

But let me address each of these in turn. I'll start first with the CUP impacts. In Cottonwood Heights there is a General Plan that we have to refer to as well as the land use codes, both the zoning code and of course, the subdivision code. In reviewing those documents we see that this community places a high value on view sheds. This community places a high value on maintaining property values and those are explicit purposes for this body to keep in mind. And these are purposes that this body is to try to protect as it acts within the discretion and powers that have been given to it by the City Council.

One of the issues that we have is that we do not have, we believe, an accurate depiction of how the view impacts will impact these neighbors. Now I appreciate these new drawings that have been prepared and submitted but we haven't had a chance to review the newest ones. I know that the ones in the packet that was submitted recently at the beginning of this month shows an elevation from the rear. We have taken that to the site and calculated at what elevation it was taken. And by our calculation it must have been drawn from an elevation of about 25 feet above the trail. And so our fear is that those impacts that will be the everyday impacts of those neighbors have not been sufficiently shown on the drawings that have been submitted. We've also noticed that there hasn't been any sort of shadow survey provided and that's something that often will accompany a development project when it's coming up next to a competing use such as a residential use so that you can see at both winter and summer equinox periods how shadows will impact various neighbors.

Now, I have before you a binder and what I have is a number of documents that I want to refer to during my presentation. I apologize to those of you who don't have a binder in front of you. I'll try to be explicit in describing what we have. But if you turn first to Tab 3, what we've done is this is our effort to show some depictions of the impacts that will be associated with this. We recognize that we don't have all of the CAD inputs if you will to prepare the nice drawings as

were done, but there are also some other larger versions of this outside in the hall that other neighbors have brought. I want to draw your attention to the third figure of this Tab 3. What this is is this is a view from Palma looking through Lot 618. And what we're going to be focusing on is the fact that there will be impacts particularly down in that corner, the southwest corner of this site, because there is a stacked parking structure in that area. And what we have here is just superimposed 20-foot tall homes and you can see that there are impacts for these homes and that these impacts will end up blocking the views and also impacting the circulation and the feel of each of these homeowners' backyards. Particularly in this area, when you get down towards the extreme southwest corner.

Another impact that exists above and beyond the view impacts is an impact to property values. We've gone out and retained an appraiser and he has provided a report that is found in Tab 4. You are certainly welcome to review that in its entirety at your leisure. I won't try to read it here. But I do want to draw this body's attention to the second page. The appraiser was taken on site, was given the drawings, and took some measurements to determine the heights based on the most recent drawings. And in the second to the last paragraph he talks about based on the information obtained from market sources, the subject parcels will – let's see – market information. The degree of diminution to the adjacent subject residential parcels will likely range from zero to 25%. Now, I asked him to explain what he meant by zero to 25% and so he continues. It says here, "this figure would represent a diminution to the overall market value of each individual residential home and corresponding lot. The degree of diminution applicable to each lot would be proportionate to the current elevation of the lot compared to the proposed finished elevation at the parking structure and office buildings. The upper end of the diminution value would likely be applicable to those parcels lying immediately west and south of Parcel 22-23-011-021, which is the southwest large parcel where the bulk of the parking structure will be located based on topography and view characteristics."

Something to keep in mind is that unlike the Blue Cross Blue Shield property to the east where those homes are above the parking lot for that particular building, the homes on Palma and also on Benecia, the elevation falls off so that by the time you get to those last four or five homes they are significantly below, in some cases the trail. So, that will cause this 14-foot tall parking structure to appear even taller than that. So, those impacts I think are important to keep in mind and of particular importance for this body to keep in mind because there's an explicit purpose identified in your Code that this body should endeavor to protect property values. In fact, if you review the criteria in the Code, it states that this Commission is supposed to do a two-part analysis to determine whether additional height is appropriate in this Office Zone. It says, "The Commission must process the proposal subject to the requirements of the conditional use chapter of this title", and then they must do a second step. That step is independent and they must evaluate and make a finding that the additional height will not adversely impact the surrounding land uses. The surrounding land uses of which we speak are of course, these residential land uses.

Now, the Code goes on and provides this body extra instruction in this area. It says, with respect to the conditional use component, that there is no presumption of approval. There is a permitted use for two-story buildings, yes. But when you're trying to go above that that is when you get into the realm of conditional use and this body makes a very careful analysis of the impacts associated with each additional story above the two-story level. It states in this section, 19.84.020 that the applicant must show that protection or property values, the environment, and tax base for the City

will be assured. Also, the applicant must show that appropriate buffering will be provided to protect adjacent land uses from light, noise, and visual impacts.

Now, we are concerned that there will be impact on the trail and the reason is because you will get a canyoning effect if you will. Some of my clients have come to me and said that they feel as though their use of it would be diminished, particularly during night time because they don't know if someone might jump out of the second level of that parking structure. So, I think those are impacts that need to be weighed as we're considering all of the impacts at issue here. The other thing is of course the impact of views as we've discussed and the impact on tax values, which is of great importance to my clients. It states in Section 19.84.080 that the Planning Commission shall not prove issuance of conditional use permit unless the evidence presented is such as to establish the following and I will just pick a few and conclude my section on this.

Subsection C states that the use will comply with the intent, spirit, and regulations of this title and will be compatible with and implement the planning goals and objectives of the City. I'll come back to this when I talk about the Master Plan because I think the fact that there is a requirement in your Code that development in the ORD Zone comply with the Master Plan, requires that this project, as proposed, not be approved.

Moving on, on Subsection D it says that the use will be harmonious with neighboring uses in the zoning district in which it is to be located. Subsection F, that the protection of property value, environment, and the tax base for the City will be assured. And K, that appropriate buffering will be provided to protect adjacent land uses from light, noise, and visual impacts.

I recognize that this body is the body that has the discretion to determine whether those findings can be made. What we encourage is that you use this wide discretion to look carefully at these impacts and determine that as proposed in its current configuration, that these buildings are too tall and in particular, the parking structure, a double level parking structure abutting a residential zone, is too much parking for this site.

Now to support this contention, I want to turn to the Master Plan and that is the bulk of the documents I have in here. If you turn to Tab 1—

Commissioner Guymon: Before you move on, can I ask you a question?

Budge: Yeah.

Guymon: You've made reference to the standards under the City ordinances for conditional uses. Do you believe those are any different from the standards under the State Act, the State Code, the Land Use Development and Management Act (LUDMA).

Budge: LUDMA in Sections 507 and 509 talks about conditional use permits and LUDMA states that if there are detrimental impacts that cannot be mitigated, then the conditional use permit can be denied. I looked at the language in your Code as well LUDMA and I think the same terms, "detrimental impacts" are found in both.

Guymon: Let me just ask you this, Subsection 2a of Section 507 it says that a conditional use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects.

Budge: And then if you continue on to Sub B, I can grab that quickly.

Guymon: I just want your views on whether that mandatory word “shall” is different from the City ordinance.

Budge: We have these ongoing debates in the Land Use Task Force as you know, Commissioner Guymon. In Section 507 my reading is this – that if those impacts can be mitigated then you are to approve. But if you continue on to Subsection B, and I think that’s the important one, because the League of Cities and Towns fought hard to have this provision put into this particular section of LUDMA. And it states this, “If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.” My comment about the wide discretion that you have was aimed at recognizing this fact and that is that you have the discretion if you, in your judgment, determine that these impacts cannot be sufficiently mitigated. You have the discretion to say in that instance we’re going to deny the conditional use as proposed.

Guymon: Thanks.

Budge: Moving onto the Master Plan. In the Master Plan you will note that there are two pages in your attachment. The first is the plan that was approved in 1995 and I know it’s a poor copy but we had to dig far into the County records to locate this. And this was the best we could. If you look on the schedule on the first page, it shows three buildings. And again I apologize for the quality of this copy. But you’ll notice that it has their listed Buildings 4, 5, and 6 and they are in the same section if you will of this current development as the current proposal. And you’ll notice there, written in small handwriting that the total square footage for Building 4 was intended to be 50,000 square feet. The total square footage for Building 5 was 50,000 square feet, and the total footage for building six was intended to be 36,400 square feet. If you add those up that’s 136,400 square feet. Now that was in 1995 and if this had not been amended then we would be arguing today that that would be the maximum number of square feet that could be put on these parcels. If you turn the page though there is litigation about this. And that was litigation pursued by a family I believe named the Buchets and they challenged an approval, an amended to the Master Plan. The County at times has referred to it as a Master Plan and as a Phasing Plan and in this case if you look, this is undated but it states in the bottom right corner “Master Phase Plan” and then there are some initials. And in fact the initialing was the subject of the lawsuit, which I have enclosed but I won’t be reading too much. It’s under Tab 2.

I want to draw your attention to this though. And that is that there is a difference between the first proposal in 1995 and this 1996 proposal. The difference is that now you have three buildings. You’ll notice that one of them is a little bit larger and we now have on this area depicted approximately 600 parking spots. Now, we’ve done some math, we’ve looked in the minutes, and we figured out what was the standard that the County was applying. The County at that time was applying four spots per 1,000 square feet. So, using that we know that with 600 parking spots that we’re talking about three buildings of 50,000 square feet each. Under this Master Plan you’re

talking about a maximum density, if you'll allow me to use that term when we're talking about a commercial use, density of 150,000 square feet of office in this corner. And the reason is obvious – we have all throughout this process, as is reflected in the minutes and as reflected in the lawsuit that was filed, efforts by all of these neighbors to be involved all along. They made decisions about buying based on this plan. They made decisions about staying in the neighborhood. Some may have made representations to people who are now owners about what has been anticipated and what has been planned for this development. What you have here is three buildings, 25,000 square-foot footprints, and then if you put a second story on each and every one of those, you come up to the 150,000 square feet number.

Guymon: Counsel, how do we know whether these drawings accurately depict what the Master Plan approvals were by Salt Lake County?

Budge: Well, we had to do some sleuthing so let me present to you my theory. If you turn to Tab 6 – this is a private document that was done in 1998 and it was done when Regence Blue Cross purchased the property we're talking about. At that time, covenants were imposed upon this property and I have marked in green on page 3 a limitation that was imposed upon this purchaser, in fact, the current owner, Blue Cross Blue Shield. It says, "All buildings constructed on the property may not in the aggregate contain more than 154,000 gross square feet of space excluding rooftop mechanical, such exclusions being subject to the prior approval of Salt Lake County. And then there is a continuation. It states in Subsection B "No more than 618 parking spaces may be constructed on the property". So again, we see a limitation. This limitation seems to be tied to what is our interpretation of what was the Master Plan approval at that time.

So, we dug further to see if there was anything else that supports it and we found something that actually supports this even clearer. If you turn to Tab 7 and then the green tab within that you'll see a discussion of all of the square footage contemplated under the Master Plan as of this document, which was recorded in 1998. You'll notice that at the bottom there are three parcels identified. They happen to be the same three parcels we're talking about tonight. They say Parcel 5, Parcel 6, and Parcel 7 have a potential floor area and total of 154,000 square feet. So, the reason we think that that recognizes the Master Plan and what were the limitations imposed by the County is, if you turn the page to page four it says, "As used in this declaration, potential floor area shall mean the potential maximum floor area of the buildings allowed, but not yet constructed, on any parcel as determined from time to time by the applicable governmental authorities. Now, we're not saying here tonight that you could never approve a development over 154,000 square feet. But what we are saying is that it can't be done until the Master Plan is amended and there hasn't been yet a Master Plan amended for this project.

Now as further support for this contention we attached Tab 8. Tab 8 is ADL because as you may know there was some public/private partnership that went on to go ahead and help with some of these infrastructure costs that were high because of the nature of the soils and what have you. If you look in the ADL, again signed in 1998, and then turn to the first green tab, you'll see a map. And this map is similar to the map I've been referring to. So, it shows that the map that I referred to in Tab 1 has been carried over and incorporated into this public finance document that was an important part of this project. If you then turn to the next green tab you'll see a table. And again, I apologize for not bringing you each a magnifying glass. But I'm giving you copies that you can look at at your leisure. But I will draw your attention that there is a narrow column on this page. If you look at the narrow column it shows Buildings 5, 6, and 7. Each of them has a square



footage of 50,000. So, again, we're back up to the 154,000 square feet that we're contending is the limit allowed for the density for this property based on the Master Plan that is in effect as of today.

Finally, there is one more document and that's the EDA. I didn't insert the whole thing. It is behemoth. It is a very large document. We did not want to kill that many trees. But we can certainly make it part of the record and I just bring out one page, which talks about that the EDA includes eight separate office buildings totaling 860,000 square feet and that squares with all of the other math we've been doing.

Now, all of this information confirms to us that the Master Plan approved a certain density. And that density was 150,000 square feet. And in the configuration that was made part of that Master Plan, that density would be allocated at three buildings, two stories each with each footprint being 125,000 square feet. Now, in this instance we've kept the 25,000 square-foot footprint to provide for these properties, but we now have gone over and above that because we're at either 284,000 square feet, depending on how you want to allocate the connection area. Or if you want to just be charitable, its 250,000 square feet. So we're at least 100,000 square feet higher than what was approved in the Master Plan that applies as of today.

Guymon: How did you determine that there were 600 parking stalls under that Master Plan?

Budge: What I did is I counted on the map and then in addition, if you look at the last tab there's a reference by the then architect saying that the math that he was using was four cars per 1,000 square feet. And then you're back into the 600 number by determining how many spots would be associated with 150,000 square feet. That is the way we do that.

So, in summary I want to state this. That we oppose buildings taller than two stories and certainly more density than 150,000 square feet without there being a Master Plan process. The reason that that process is important is we can bring into this body the group that would approve a Master Plan announce this and give an explanation and discussion of impacts. We could talk further about light. We could talk further about noise. We could talk further about trail impacts and all of these other things. In addition, it's important to apply carefully all of the conditions that are in your ordinance related to conditional use permits. And we believe that there's already been a lot of careful analysis about this and it was done by the County and that analysis confirmed that what would be best and least impactful is to put the office use, which we all agree should occur on this site, push it up toward the road, make it two stories, and have it far away from the homes.

And the other thing that is important and I don't want to neglect to mention is this. And that is there truly is a large impact associated with a two-level parking structure. If you get these uses down to the square footage that we think is appropriate under the Master Plan, you don't need a second level. And because of that, it is important to look at not only the impacts associated with the parking structure, but also the impacts with the building. The parking structure is what's going to be the first thing you see if you're a resident on Palma. It's going to be the first thing you see when you wake up in the morning and you look outside because you're going to see the walls of that 14-foot tall parking structure that is already at an elevation higher than the trail in your backyard. And those impacts will be there permanently. Whereas, if it is on-grade parking, which is, if you look at the map, the map talks about there being a parking structure. And you can look at this at your convenience. I don't want to direct all of your attention at all times. But if you look

at the second map on Tab 1, in the upper corner it details there where a parking structure was going to be located. And that communicates to me together with the map that what was intended here was surface parking.

And so, this is a site that should have office use. This is a site that should have office use somewhere and maybe in the 150,000 square foot level. In fact, that would take into account what is a permitted use by this under your zoning code. And then furthermore, what is appropriate for this site is surface parking. And right now what we have is an effort to place too much density on this site that will impact my clients. Are there any other questions?

Commissioner Holt: I have one. And thank you for this research. I was looking for these maps myself. I found the first one but the second one I didn't know existed until this evening. So, thank you for that. But with regard to the Master Plan that you're asking for, the site is built out with the exception of this particular project site, so isn't the site plan that the developer is submitting in fact a Master Plan for this particular area? I'm a little confused as to what exactly you are expecting. We can't amend the 1996 Master Plan and in fact whatever decide to approve would be the amendment to the Master Plan or am I misunderstanding? What exactly are you asking?

Budge: We're contemplating a different process – a process where it would be noticed up to all residents that was going to be contemplated as a Master Plan amendment. And we could have a broader discussion than just this site. We can talk about how are the impacts developed on all of the property, what were the concerns then, what are the concerns now. The fact is is that if you approve a conditional use permit –

Holt: We're going to be discussing that with the CUP approval. We will be discussing those issues. So –

Budge: But it hasn't said Conditional Use Permit Application and Master Plan Application.

Holt: And Site Plan Application. We're considering both – both the CUP and the site plan. That's why we're going through this process of reviewing the site plan and asking questions about the site plan.

Budge: And I think that's a fair point, but if you look at Tab 5, I've put the Code in there and it states this, "Any development in the ORD Zone shall be subject to a Master Development Plan approved by the Planning Commission. So, that's really the document we're looking. If you're saying that – I mean I think the City Council could have said, Planning Commission we're going to recognize that you're going to approve CUPs in certain instances and site plans in others. But if that were the case then they would have said here any development in the ORD Zone shall be subject to a CUP application and shall be subject to a site plan. But instead what we have is this term used and what we're saying is that in order to give effect to this there has to be a process to evaluate the Master Development Plan and look at all of those uses.

Guymon: So, you're saying the real question is whether there is a Master Development Plan?

Budge: Right.

Guymon: You've provided us with your view of evidence that will lead us to the conclusion that there is a Master Development Plan.

Budge: Even the staff report says as the first item, documents from County – Master Development Plan. I mean there's been recognition by the staff of this needing immediate qualification that there be a Master Development and the staff report refers to it. When I came and met with the staff they said here is a box that contains the Master Development Plan and it's in a banker's box.

Guymon: When we adopted the ORD Zone for this property these limitations and standards that you've referenced didn't find their way into the zone. So what trumps? The zone, which was later adopted or your argument of an earlier Master Plan?

Budge: Well, apparently what the City is doing is in cases where a Master Development Plan has existed and where people have relied on it and built upon it, they are still applying it even though the approval was given by the County. Does that answer your question? I mean that's really what we're dealing with here. I'm not saying that this body is powerless to amend it. I'm just saying they need to go through that process first. What we have is really a cart before a horse. We're looking at the CUP before we've done an analysis of all of the impacts. I recognize as Commissioner Holt indicated, that those same kinds of things could be analyzed here. But I really think that these are so important and have such an impact on these values that it merits careful deliberative determination.

Holt: And that's why my initial question tonight was can we or do we need to consider the original proposal by the developer for the project area. Originally the Master Plan he's referring to. We did get an answer to that this evening but maybe it's worth revisiting.

Budge: I have nine seconds so I'd like to use it to hand out a summary. Can I do that?

*(end of verbatim portion)*

(19:12:20) Jim Mayer identified himself as a design engineer and was present representing a group of homeowners and was asked to prepare drawings showing the perspective of the buildings from the homeowners' side rather than just the fence line. Mr. Mayer included the home site elevations with the site of the buildings to show the parking structure and the buildings. What was not shown in the pictures provided by the developer was that the buildings are quite large, particularly as seen from the homes.

(19:14:41) Christy Morrison gave her address as 6624 Juliet Way. She thanked the Commission for listening to input from concerned citizens and for studying the issue. She agreed with the previous comments and stated that with regard to the CUP, the landscaping ordinances and requirements set forth in Chapter 19.46.060 indicate that when there is a parking structure, the 30% landscaping requirement shall be increased to 35%. The Planning Commission, however, may require additional landscaping. She suggested that be taken into consideration. She noted that the 35% requirement is not currently being enforced by the City. She questioned who was reviewing new development and enforcing compliance. It had become evident to Ms. Morrison that the City is only looking at the documents submitted by developers and not reviewing claims when calculating landscaping requirements for maximum lot coverage. She asked previously to

have the landscaping calculations reviewed but has not received a response. She also requested the plans for Buildings 8 and 9, which includes the medians in the landscaping requirements. She referred to the ordinance and stated that there cannot be double use, which she felt was occurring. She also contended that the landscaping coverage percentages had not been reviewed properly and were in violation and out of compliance. She next noted that the off-street parking is not in compliance.

(19:18:22) Elizabeth McOmber gave her address as 6696 Benecia Drive and thanked the Commissioners for their time. She agreed with Mr. Budge's remarks, however, with regard to mitigation of this particular project there are additional issues. First was to reduce the number of spaces to the 2.8 required by the ordinance. That would allow a smaller parking structure on the site. She asked how much of the parking was moved under the six-story building as she could not tell that from the plans submitted. She questioned whether the parking could be moved under the four-story building in addition to the six-story building. She also asked if it would be possible to excavate parking under the two buildings and the parking structure itself. One of the mitigations proposed was to put the parking underground as it moves closer to the neighborhood. She believed that would help assist in mitigating the problems presented by the current plan. Ms. McOmber next brought up the issue of the traffic study and stated that it takes into account impacts to the 3000 East corridor, to the east, and Wasatch Boulevard. What was not reflected was a study of the impacts to the neighborhood. She asked that those issues be taken into account by the Commission.

(19:21:27) Jaren Davis gave his address as 2845 Palma Way and expressed his gratitude to the Commission for their service on behalf of the citizens. He stated that he was involved as a real estate agent in purchasing 10 lots from OMN and then developing some of them, selling some of them as raw ground, and keeping one of the homes for his residence. He was active in soliciting information in regard to the development. He stated that commitments were made that there would be a limitation to two stories. One of the individuals involved was Mr. West. Mr. Davis confirmed that there was a commitment to the neighborhood of a two-story height limitation on the ground being discussed.

(19:22:45) (*verbatim transcript*)

Mike Jenkins: My name is Mike Jenkins. I live on Coquina Court which is just west of the proposed development and would like to also say as the others have that we appreciate your time and your interest and your attention and your hard work. You've been inundated with a lot of information and we're counting on you to analyze that and use your best judgment to come to a correct conclusion. The two things I want to talk about really are ordinances that require this body to act in a particular way. And Mr. Budge touched on both of them but I want to touch on them again with a different kind of a spin. The first is the requirement that I've got there on the page in front of you on the top that I highlighted in orange which reads, "Any development of the ORD Zone shall be subject to a Master Development Plan approved by the Planning Commission. And you had a discussion with Mr. Budge about the County's plan and whether you needed to amend it or whatnot. And I would suggest an alternative reading of this and that is, it means exactly what it says, that this body, this Planning Commission in this City has to approve a Master Development Plan for this area before any development in the ORD Zone can take place, including this proposed project. So, I would suggest that you read this to say that you as a precondition of considering this conditional use permit first have to approve a Master

Development Plan complete with public notice and public input. Of course, we're not talking about redoing the whole area and tearing down or moving buildings. The buildings that are there obviously will be approved as part of the Master Development Plan that you will approve. We're going to really focus on how the Master Development Plan will affect this grassy area where the proposed project is suggested to be.

The bottom ordinance that I'd like you to look at is the maximum height of structures. We're not just talking about a conditional use here. If we were talking about only a conditional use permit, the height requirement would be in the middle portion that I put there which are the allowed conditional uses in this zone. You don't find building height there. You find building height in 46.070. Now why is that. Well because this City, when it passed these ordinances wanted building heights to be managed separately from the one-step conditional use permit. And this is where the two-step approach that Mr. Budge talks about can be found. I've highlighted in blue the word "and". That's because there's a portion of this ordinance that you need to apply before the word "and", which is adverse impacts on surrounding land uses, including the trail, which I use, and the part after the word "and", which is a traditional conditional use permit. I urge you to follow both of those rules just as they are written. Thank you very much.

*(end of verbatim transcript)*

(19:26:05) Russell Nelson gave his address as 2833 Palma Way and stated that much has been said about the legal aspects. He referred to the City's web page which specifically states that the Commission is charged with providing balance, representation in terms of geographic, professional, neighborhood, and community interests in the development of a healthy and well-planned community. He recalled that a petition was gathered with over 400 signatures. The majority were opposed to the project. He questioned how something that is so one-sided can be fairly balanced and represented. He remarked that the duty of the Commission is to find that balance.

(19:28:56) Mindi Stowers gave her address as 6623 South Benecia Drive and expressed her opposition to the second access to the trail into the corporate center. She felt there was enough foot traffic from the buildings now and did not want any more. She was concerned that it would increase foot traffic and crime.

There were no further public comments. The public hearing was closed.

Staff was asked to comment on the Master Plan requirements. Mr. Berndt stated that the original Salt Lake County Master Plan that was approved was for the entire Cottonwood Corporate Center. In this instance, the master development plan was the site plan before the Commission. It defined the master use and development of the property. Commissioner Holt asked if consideration needed to be given to the original Master Plan for the site. Concern was expressed that the Master Plan is not definitive.

In response to a question raised, Mr. Berndt stated that the City is not bound by previous square footage limitations and they can be adjusted. It was noted that the original development plan took into account the hotel, which is now the restaurant.

Chair Bolyard indicated that the Commission would next address the issue in a work session which would be advertised. The matter would be reviewed and researched carefully by the Commission. Legal issues on both sides would need to be considered. The Commission would continue to accept written comments through April 4.

#### **4.0 ACTION ITEMS**

##### **4.1 Approval of January 18, 2012 and February 1, 2012 Minutes.**

(19:35:50) The minutes were reviewed and amended.

(19:36:55) *Commissioner Scott moved to approve the minutes of January 18, 2012, as amended. Commissioner Shah seconded the motion. Vote on motion: Paxton Guymon-Aye, Lindsay Holt-Aye, Dennis Peters-Aye, Joseph L. Scott-Aye, Jennifer Shah-Aye, Chair Parry Bolyard-Aye. The motion passed unanimously.*

(19:37:35) *Commissioner Holt moved to adopt the minutes of February 1, 2012, meeting as written. Commissioner Peters seconded the motion. Vote on motion: Paxton Guymon-Abstained, Lindsay Holt-Aye, Dennis Peters-Aye, Joseph L. Scott-Aye, Jennifer Shah-Aye, Chair Parry Bolyard-Aye. The motion passed unanimously with one abstention.*

#### **5.0 ADJOURNMENT**

(19:39:40) *Commissioner Guymon moved to adjourn. Commissioner Scott seconded the motion. Vote on motion: Paxton Guymon-Aye, Lindsay Holt-Aye, Dennis Peters-Aye, Joseph L. Scott-Aye, Jennifer Shah-Aye, Chair Parry Bolyard-Aye. The motion passed unanimously.*

*I hereby certify that the foregoing represents a true, accurate and complete record of the Cottonwood Heights City Planning Commission Meeting held Wednesday, March 21, 2012.*

A handwritten signature in cursive script, reading "Teri Forbes". The signature is written in dark ink and is positioned above a horizontal line.

Teri Forbes  
T Forbes Group  
Minutes Secretary

Minutes approved: 04/18/2012